

Meeting Summary | URBAN LEVEL OF FLOOD PROTECTION Work Group Webinars

August 15, 2011 2:00-4:00pm and August 17, 2011 9:00-11:00am

Webinar 1

Action Items:

- Ask the ULDC work group to reconsider the peer review panel recommendation
- Mr. Kirby will provide written responses to the CSAC and the League of Cities questions.
- Work Group members can submit their comments on the recommendations to DWR within one week (by Wednesday August 24th).
- The ULOP design team will update the Work Group on the progress of the recommendations.

1. Welcome and Introductions

Participants and staff on the phone and in the room introduced themselves.

Facilitator Dorian Fougères with the Center for Collaborative Policy welcomed the participants to the first of two identical webinars for the ULOP Work Group. He reviewed the meeting objectives:

- To answer questions about the draft Criteria for Demonstrating Urban Level of Flood Protection
- To answer questions about the Response to Comment spreadsheet
- To answer questions about the team's intent to prepare a set of recommendations for legislative changes

Ken Kirby, Executive Advisor, FloodSAFE, thanked the participants for making the time to provide thoughtful comments and for joining the webinar to hear the responses. In his opening remarks, Mr. Kirby explained that after much discussion with the Work Group at the previous two meetings and with DWR's legal counsel the design team has decided not to move the criteria forward at this time. It was their intention to next release an administrative draft, take comments and then move into the formal rule making process early next year. Mr. Kirby explained this process is now on hold and he will soon explain more about their next steps.

2. Review of the Document Revisions

Rebecca Guo, MWH, reviewed the high level changes made to the draft document (which was distributed to the work group on August 1st). The major changes included:

- New definitions were added
- Rev 2 and Rev 3 were combined
- The 200 year floodplain map questions were clarified

- The elevation requirements were modified to be more consistent to existing legislation
- Non urbanized requirements were added

3. Review and Discussion of the Responses to Comments Spreadsheet

Mr. Kirby reviewed each comment submitted and the response provided by DWR, the spreadsheet was provided to the Work Group on August 1st.

[provide summary review]

4. Discussion of Next Steps for ULOP Criteria

Mr. Kirby elaborated on what he mentioned in his opening remarks, based on comments by the Work Group and internal discussions the design team has come to the conclusion that the way the law is written makes it hard, if not impossible, to implement. With that in mind, the design team has decided not to move the criteria forward at this time, and instead is working on a set of recommendations on how to best refine and clarify the intent of the legislation. They are working on this set of recommendations now, based upon comments and discussions with the Work Group. The design team plans to present these recommendations to Deputy Director Gary Bardini, who will then recommend to the team if/when they should proceed and present them to Director Mark Cowin.

Mr. Kirby explained he will suggest to DWR executives to share the set of recommendations with the Work Group once approves, however that will be up to the executive leadership. Once the design team has presented the recommendations and gets feedback they will let the Work Group members know, and keep them updated on the progress, whether the executives choose to move the recommendations forward or not.

One of the recommendations will be to establish a process for DWR to assist local agencies in creating the 200 year floodplain maps.

Questions from California State Association of Counties and League of Cities

Before Mr. Kirby answered the set of questions submitted by CSAC and the League of Cities, he asked if other participants on the call had outstanding questions they would like answered.

Jim Nelson asked if the design team has defined interior drainage. He asked if it is limited to the 100 year floodplain map areas.

- Mr. Kirby responded that the draft document outlines a process consistent with FEMA's requirements which includes any source of flooding; however, in many cases the smaller drainage systems are not included on FEMA maps.
- Mr. Nelson asked if areas not mapped by FEMA are subject to this requirement.
- Mr. Kirby responded that is consistent with the way the document is currently written.

- Mr. Nelson clarified however that is FEMA did go through a scoping process and included a areas to be mapped then those areas would then be subject to this requirement.
- Mr. Kirby agreed. He mentioned that the design team would like to recommend that the State lead a process, similar to what FEMA conducts, with local areas to create the 200 year floodplain maps. He mentioned that FEMA is willing to display the 200 year boundary on their maps as well. He explained that the Work Group has expressed how difficult it would be to create these maps themselves, and so DWR is looking into recommending a defined process to assist with the effort a kin to how FEMA assists with the 100 year floodplain maps.

Mr. Kirby reviews the questions submitted by CSAC and the League and goes through them one by one to respond.

Question 1: regarding the recommendations to the legislature.

- Mr. Kirby explained that the Department will not recommend specific legislative language changes, but rather clarify the intent and make some refinements in terms of the approach. The Department would only weigh in on language changes if the Legislature asks them to.
- He explained the design team plans to present their recommendations to Mr. Bardini in 2-3 weeks. He reiterated that the design team has taken into account the comments made by the Work Group in developing their recommendations. They will circulate the recommendation set to the Work Group if DWR executives allow them to.

Question 2: regarding the intent of SB 5 and deep floodplains.

- Mr. Kirby mentioned that this statement is consistent from what he has heard from many people involved in the discussions leading to this legislation; however, there is no indication of this in the legislation that was passed. The legislation is not centered on deep floodplains or safety. DWR has to respond to the legislation as it is written.
- Dave Peterson asked why the legislation would be limited to this geographic area if it was intended to be limited to deep floodplains and public safety threats. Mr. Kirby responded that while rationally that makes sense, the law is not written that way, there are deep floodplains outside of the Central Valley that are not included in the legislation. It is difficult to induce the intent. He mentioned that this may be something the design team should highlight in their recommendation set.

Question 3: regarding the timeline for formal regulations.

- Mr. Kirby explained that the timeline has been changed since they are not moving the criteria forward at this time. However, when the criteria does move into the formal rule making process the Office of Administrative Law (OAL) process will include public input. DWR would preview any draft publically before it went into the formal rule making process.
- There is no intent to incorporate these criteria into Title 23.
- Regarding the relationship between ULDC (urban levee design criteria) and ULOP, DWR executives consider these separate things and the design teams have been instructed to treat them separately; there is no attempt to combine or package them together.

Question 4: regarding FEMA guidelines.

- Mr. Kirby explained that DWR is in conversations with FEMA about this now to create a consistent approach.

Question 5: regarding fiscal impacts.

- Mr. Kirby mentioned that as part of the recommendation set, the design team is working on some rough estimates for the cost of implementation as the law is written and for any alternatives that they should suggest (including estimates for the mapping effort).

Question 6: regarding prioritization.

- Mr. Kirby said that the design team is moving forward with the recommendations to clarify the legislation to make it more implementable. At this time they are not working on prioritizing the standards and requirements set in the law.

Question 7: regarding environmental justice.

- Mr. Kirby responded that DWR is not going to take a position on this. He recommended that they take this up with their local legislators.

Question 8: Regarding the timing of SB 5.

- Mr. Kirby reiterated that DWR agrees the timing and triggers of SB 5 need to be adjusted and that is something that will be highlighted in their recommendation set.

Question 9: regarding creating 200 year floodplain maps.

- Mr. Kirby mentioned that the design team has some ideas of how this process could be structures, but he asked the Work Group if they have any preference.
- Work Group members responded that funding would be most helpful. They explained that the locals should create the maps because they have the best understanding of the areas, but they do not have the resources to do so. They would prefer to take the lead in creating them themselves with grants or cost sharing support from the State.
- Glen mentioned that the schedule will depends the funding available. The local agencies would like to move quickly on this process but they do not have the resources to do so.

Regarding the CVFMP

- Mr. Kirby explained that DWR is moving forward with the Central Valley Flood Management Plan and intends to meet the legislative deadline for releasing it. He explained that the 200 year flood requirement is not set in the CVFMP but is set in the government code and SB 5. The ULOP is only setting the criteria to meet the requirement.
- Glen asked if it is DWR's intention to move forward with these refinements in the current legislative session. Mr. Kirby responded that will be up to DWR executives.
- Dave Petterson pointed out that the jurisdiction of the CVFMP and the ULOP are different.

Question 10: regarding exemptions.

- Mr. Kirby explained that DWR does not have the authority to exempt any specific triggers such as discretionary permits based on how the current legislation is written.

Question 11: regarding urban sprawl.

- Mr. Kirby responded that he understands the question, and the point they are making, however he believes existing developments should still have the same level of protection as new developments.
- Mr. Peterson responded that because of Proposition 218 many urbanizing will not be able to assess themselves and thus it will result in leap frog development.
- Karen mentioned that this is sending a mixed message from that State that in some cases it is promoting smart, sustainable, and more compact growth, while this legislation is actually encouraging urban sprawl because it will be easier.

Question 12: regarding expiration of finding.

- Mr. Kirby explained that the finding expiration is something that DWR wanted to include in the criteria to give local agencies more stability, however, flood protection is dynamic and findings must be revisited. He explained that the 20 year timeframe is their attempt to balance between the need for certainty and the need to back up claims.
- Members of the Work Group explained that they would like ministerial permits to be exempt from the finding process, as they are permits based on already granted discretionary permits carrying out preapproved projects. They explained that if the project is approved and discretionary permits are granted in line with the finding the ministerial permits should be exempt. They explained their concern is with time, as often such projects can take over 10 years to be implemented.

Question 13: regarding land use attorney peer review.

- Mr. Kirby responded that it is not the intent of DWR to have land use attorneys review these criteria. DWR's legal counsel will review them before they are released to the OAL rule making process. He recommended that local agencies have land use attorneys review and submit their comments are part of the public comment period.

Question 14: Regarding the ULOP requirement for a peer review panel.

- Mr. Kirby explained that this recommendation came from the ULDC work group, the recommendation has more to do with levee operation and maintenance than it does with land use.
- Mr. Peterson mentioned that the ULDC work group has gone back and forth on this topic and that it may not be fully vetted with the group.
- Mr. Kirby will suggest that Rod Mayer raise this issue back up with the ULDC work group. He mentioned that the ULOP criteria will be consistent with whatever that group recommends on the topic.